Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.20554

In the Matter of	)
	)
AT&T Petition to Launch a Proceeding	)
Concerning the TDM-to-IP Transition	)
	)

GN Docket No. 12-353

In the Matter of	)
	)
Petition of the National Telecommunications	)
Cooperative Association for a Rulemaking	)
to Promote and Sustain the Ongoing TDM-to-IP	)
Evolution	)
	)

COMMENTS OF TELEPACIFIC COMMUNICATIONS

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Arrival Communications, Inc., Mpower Communications Corp., and U.S. TelePacific Corp. (all of whom d/b/a TelePacific Communications) ("TelePacific") respectfully submit these comments in response to the Public Notice issued by the Commission in the above-referenced docket.[1]

TelePacific is a facilities-based CLEC serving more than 1,200,000 business customer lines in California, Nevada, and Texas. It is the largest competitor to the RBOCs in California and Nevada and the second largest local provider of business services in California. It has 15 TDM switches and 9 soft switches, nearly 300 collocations, which it uses to obtain last mile access from ILECs, and over 50,000 fiber route miles of network. TelePacific can provide

[1] *Pleading Cycle on AT&T and NTCA Petitions*, GN Docket No. 12-353, Public Notice, DA 12-1999 (Wireline Comp. Bur. Dec. 14, 2012).

service to nearly 20% of all small and medium businesses nationwide. It has been named to Inc. Magazines list of fastest growing private companies in America in each of the last six years.

I. SUMMARY

AT&T's Petition should be substantially modified or denied. Its proposal does not comport with the Commission's long history of promoting competition from multiple providers. AT&T's Petition is premised on the unsupported and unwarranted assumption that neither AT&T nor any other ILEC controls bottleneck last mile transmission facilities and that competition will flourish in an IP world without any regulations. Contrary to what AT&T suggests, the ongoing evolution to IP-based networks does not alter ILEC market power, especially over last mile loops to businesses.

That said, because IP services are already being provisioned over last mile copper loops, the Commission should update its existing copper retirement rules. Innovative companies have harnessed the innate capacity of embedded copper loop infrastructure and have found ways to increase the capacity of copper loops and the broadband speeds that carriers can deliver IP services over that loop infrastructure. Because Ethernet over Copper ("EoC") provides an innovative solution to deploy robust broadband and because the vast majority of commercial buildings lack fiber-based broadband, the demand for EoC is rising. Thus, where copper is available, CLECs rely on it to deliver affordable high-speed broadband to customers.

Despite the enormous promise of copper, however, the Commission's current copper retirement rules impede competitive carriers' ability to use copper loops to provide EoC and the retirement of these facilities is expected to accelerate in the near future. The Commission should not permit this retirement to thwart the expanded use of EoC. Instead, the Commission should modify its copper retirement rules to ensure that (a) customers currently receiving broadband over copper loops do not lose their affordable broadband service and (b) the rules promote the

regulatory certainty necessary for further investments in affordable broadband over copper.

TelePacific supports NTCA's "Smart Regulation" approach to promoting and sustaining an IP evolution. Contrary to AT&T's request, the Commission should not attempt simply obliterate all current regulation and start with a blank slate of no regulation. Rather, the Commission should modify, where necessary, the existing framework based on sound principles that have "stood the test of time" and NTCA's proposed "smart" regulatory approach does just that.

If the Commission decides to conduct a trial as proposed by AT&T, steps must be taken to protect customer-carrier relationships and the trial process must be clarified as follows: (1) to ensure that the appropriate trial wire centers are picked, the Commission, not the ILEC, should determine which wire centers are subject to the trial; and (2) the Commission should establish a set of ground rules under which the trial is conducted, which should be designed to prevent damage to competition.

II. THE FCC SHOULD CONTINUE ITS POLICY OF PROMOTING COMPETITION WITHIN THE TELECOMMUNICATIONS INDUSTRY

As the FCC's National Broadband Plan recognized, "lay[ing] the foundation for America's broadband future" involves ensuring "robust competition…for American businesses…through…well functioning wholesale markets."[2] The Broadband Plan observed that the FCC's current wholesale market policy is flawed because it is not technology neutral since "[s]imilar network functionalities are regulated differently, based on the technology used."[3] The

[2] Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 47 (2010) ("Broadband Plan") (2010).

[3] *Id.*

Broadband Plan found that "longstanding competition policy objectives"[4] were being undermined as a result because competitors' access to the inputs necessary to provide competitive broadband services were being impeded.

Because one of the Commission's core missions under the Telecommunications Act of 1996 is to foster and ensure competition in all telecommunications markets, the Commission cannot accept AT&T's suggestions that it eliminate all pro-competitive regulations. For over three decades, the Commission has recognized the benefits of competitive entry in all telecommunications markets. In 1980, the Commission recognized that competition "will ultimately result in the provision of telecommunications service at the lowest possible cost; in the reduction or elimination of waste; in making carriers more responsive to the needs and desires of consumers; and, in making carriers respond more rapidly and efficiently to technological change and innovation."[5]

Congress had the same expectation when it enacted the 1996 Act and attempted to eliminate the monopoly power enjoyed by the RBOCs.[6] The 1996 Act did not dictate the precise forms competitive entry could take, nor did it require a competitor to have deployed its own facilities prior to obtaining use of the ILEC network, either through interconnection, UNEs or resale.[7] Instead, as the Commission recently recognized in the *Qwest Phoenix Forbearance Order*, "Congress established means for additional competitors to enter without fully duplicating the incumbent's local network."[8] Thus, "it is clear Congress wanted to enable entry by multiple

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[4] *Id*.

[5] *In the Matter of MTS and WATS Market Structure*, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, ¶ 105 (1980).

[6] *Verizon v. FCC,* 535 U.S. 467, 476 (2002).

[7] *Verizon*, 535 U.S. at 491-92.

[8] *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in*

competitors through the use of the [I]LEC's network."[9] Consistent with the pro-competitive vision of the 1996 Act, the Commission recognizes that "firms operating in a market with two or fewer firms… are likely to recognize their mutual interdependence and…in many cases may engage in strategic behavior, resulting in prices above competitive levels."[10] As former Chairman Powell explained, a duopoly "decrease[s] incentives to reduce prices, increase[s] the risk of collusion, and inevitably result[s] in less innovation and fewer benefits to consumers. That is the antithesis of what the public interest demands."[11]

The Commission has long recognized that increased innovation brought about by competition promotes the provision of new technologies and best serves the public interest.[12] For instance, before competitive providers offered xDSL services, RBOCs were reluctant to offer the service for fear of cannibalizing their existing products.[13] Indeed, it was competition from providers using unbundled copper loops that spurred ILEC investment in DSL and broadband.[14]

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the Phoenix, Arizona Metropolitan Statistical Area, 25 FCC Rcd 8622, at 8639, ¶ 32 (2010) ("*Qwest Phoenix Forbearance Order*"), *aff'd Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

[9] *Id*.

[10] *Id.*, ¶ 30.

[11] *Application of Echostar Communications Corp.*, 17 FCC Rcd 20559, 20684 (2002) (Separate Statement of Chairman Michael K. Powell).

[12] *Time Warner Entertainment Co and US West Communications, Inc.*, 8 FCC Rcd 7106, 7107-8 (1993).

[13] *See How Phone Firms Lost to Cable in Consumer Broadband Battle*, Wall Street Journal, Mar. 13, 2003, at 1.

[14] In 2003, the Commission's Chief Economist concluded that broadband provided through unbundled access to copper loops was one of the few unambiguous successes of the 1996 Act because it brought "dramatic price reductions and dramatic jumps in DSL deployment" and "for every DSL line shared, the ILECs deployed four DSL lines of their own." Communications Daily, Oct. 20, 2003, at 10 (quoting FCC Chief Economist Simon Wilkie). *See* Council of Economic Advisers, Economic Report of the President, February 1999, at 187-188, (stating that as the President's Council of Economic Advisers explained, "[a]lthough DSL technology has been available since the 1980s, only recently did [the ILECs] begin to offer DSL

Likewise, as the Commission recently found, the availability of UNEs, particularly UNE loops, has "led some competitive carriers to invest in facilities and operational support services to bring innovative new services to customers."[15] The Commission has acknowledged the ongoing innovation competitive carriers bring to the market by extracting more bandwidth from the copper loop by providing services such as EoC.[16] On January 25, 2013, TelePacific and others filed an *ex parte*, discussed in more detail below, outlining the strides CLECs have made in providing EoC, providing supporting data, and requesting that the Commission take steps to facilitate this innovative means of providing competitive broadband.[17]

III. THE ONGOING EVOLUTION TO IP-BASED NETWORKS DOES NOT ALTER ILEC MARKET POWER, PARTICULARLY IN THE BUSINESS MARKET

Contrary to AT&T's claims, the IP evolution will not somehow level the playing field. The ILECs continue to serve a very high percentage of business customers nationwide and have the only last mile connections to most businesses. In fact, the Commission recently found that competitive deployment of last mile access facilities has generally not occurred except in areas with significant concentration of business demand.[18] The Commission found that areas where

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service to businesses and consumers seeking low-cost options for high-speed telecommunications. The incumbents' decision finally to offer DSL service followed closely the emergence of competitive pressure from … the entry of new direct competitors attempting to use the local-competition provisions of the Telecommunications Act of 1996 to provide DSL over the incumbents' facilities"), *available at* www.gpo.gov/fdsys/pkg/ERP-1999/pdf/ERP-1999.pdf.

[15] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8677, ¶ 108.

[16] *Id*. at 8674-75, ¶¶ 102-03.

[17] Letter from Eric J. Branfman *et al.*, counsel for TelePacific *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013)("TelePacific *et al.* 1/25/13 Letter").

[18] *See Special Access for Price Cap Local Exchange Carriers*, WC Docket 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, 27 FCC Rcd 10557, at 10582, ¶ 49 (rel. Aug. 22, 2012) ("*Special Access Order*").

the demand is less concentrated cannot easily be served by extending competitive wireline networks from those areas where demand is concentrated[19] and self-provisioning last mile facilities to small and medium size businesses and residential consumers is not economical.[20] Economic barriers to self-provisioning include significant sunk costs, substantial economies of scale and scope, and access to rights of way and buildings. As a result, deployment of competitive last mile access facilities is "costly and difficult."[21] A study recently performed by TelePacific showed that only 12.5 percent of its customer locations in 30 wire centers were served by alternative last mile facilities.[22] ILECs continue to control the vast majority of last mile access to business customers.

Further, the ILEC will likely not deploy fiber facilities to most small and medium sized business customers. For example, AT&T has stated that it intends to deploy fiber to reach approximately 50 percent of the multi-tenant office buildings in its 22 state footprint.[23] As a result, the remaining half of the multi-tenant business locations in AT&T's territory will be wholly reliant on copper infrastructure for reliable wireline services.[24] While Verizon is the only RBOC to have invested in fiber to the home, it too is limiting its fiber investment. Verizon has made clear that it will not be deploying fiber to forty percent of its territory[25] and has informed

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[19] *Id.*, ¶¶ 34, 60, 55.

[20] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8670, ¶ 90 (citing *Triennial Review Order*, ¶¶ 85-91).

[21] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8661, ¶ 73.

[22] TelePacific *et al.* 1/25/13 Letter at 6.

[23] *See* Laying a Foundation for Future Growth, AT&T Analyst Conference, Nov. 7, 2012, at 11, *available at* http://www.att.com/Common/about_us/files/pdf/analyst_presentation_bw.pdf.

[24] *See id.*

[25] *See* Verizon 2011 Annual Report at 3 (claiming that FiOS has passed homes in 60% of its wireline territory).

investors that it will not expand FiOS because "every copper customer doesn't make financial sense to convert to FiOS."[26] Thus, Verizon only intends to deploy fiber to the number of homes to which it committed in its original local franchise agreements and "at this point [Verizon] won't build beyond that."[27]

Nor are cable companies viable competitors, especially for the business customers TelePacific serves. Because cable companies have predominantly residential networks, in many instances they do not have facilities that pass the locations of TelePacific's business customers. It is thus no surprise that NRRI has found that "cable telephony substitution" has not occurred in the business market to the same extent it has occurred in the residential market.[28] For reasons of reliability and because they do not offer features desired by business customers such as line hunting, wireless and satellite services are not substitutes for the reliable wireline services that business customers seek.

While AT&T asserts that competitive forces have caused it to lose a significant number of lines,[29] ILEC business line loss is much lower than ILEC residential line loss.[30] Cable substitution is more likely to occur in the residential market where cable networks are located and because residential customers are more willing to tolerate the reliability issues associated with cable-provided broadband and voice services. Residential users are also less concerned

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[26] Transcript, Fran Shammo, Executive Vice President and Chief Financial Officer, Verizon, Goldman Sachs Communacopia Conference, at 9 (Sep. 20, 2012).

[27] *Id*. at 13.

[28] NRRI, The Transition from the Legacy Public Switched Telephone Network to Modern Technologies, Professor David Gabel, Steven Burns, Report No. 12-122, at 5 (Oct. 2012) ("NRRI Transition Report"), *available at* http://www.nrri.org/documents/317330/90b7e015-cfbe-4a16-829f-88643d84b2e1.

[29] AT&T Petition at 4-5, 10.

[30] NRRI Transition Report at 6 (ILEC losses of business line between 2005-2010 were more than 50% lower than residential line losses).

about wireless reliability and quality of service issues.

IV. THE COMMISSION SHOULD UPDATE EXISTING COPPER RETIREMENT RULES SINCE IP SERVICES ARE ALREADY BEING PROVISIONED OVER COPPER

AT&T's Petition suggests a false choice between regulating "legacy" TDM technology and deregulating "new" IP technology. The advantage of technology is that it can turn what was once considered "old" into something "new." Copper loops are a fundamental building block in communications networks, including the IP-based networks that both industry and regulators aspire to deploy across America. Almost since the ink was dry on the *Triennial Review Order*[31] and the Commission's copper loop retirement rules,[32] innovative companies have harnessed the innate capacity of embedded copper loop infrastructure.

These companies, including equipment manufacturers and telecommunications carriers, have found ways to increase the capacity of copper loops and the broadband speeds that carriers can deliver over that loop infrastructure. In particular, the development of EoC technology makes broadband available to a large base of customers that previously did not have access to affordable broadband capacity because they were not located close enough to fiber networks.

EoC provides an innovative solution to deploy robust broadband. It is widely understood that the costs of deploying fiber in the local loop to every home and business are daunting,

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[31] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order"*), *corrected by Errata*, 18 FCC Rcd 19020 (2003), *vacated* and *remanded in part, aff'd in part*, *United States Telecom Ass'n v. FCC*, 359 F3d 554 (DC Cir 2004) (*USTA II*), *cert. denied*, 543 U.S. 925 (2004), *on remand, Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) ("*TRRO*"), *aff'd*, *Covad Commc'ns Co. v. FCC, 450 F.3d 528 (D.C. Cir. 2006)*.

[32] 47 C.F.R. § 51.333.

especially in the midst of a global economic slowdown, and it appears that with the exception of Verizon's FiOS project, ILECs have elected to forego deploying fiber directly to residences and small and medium sized businesses. Thus, copper — whether in the form of a hybrid fiber/copper deployment or in the continued use of copper from the central office to the end user premises (home run copper loops) in many more urban and suburban settings where loop length is less of a concern — will remain a prevalent and important part of the network for some time.

While many urban areas have seen expansion of fiber capacity, the vast majority of commercial buildings lack fiber-based broadband. Furthermore, the business case to invest in deployment of fiber in the near term for one or two Ethernet service terminations is marginal at best. On the other hand, EoC is ideal because it leverages existing copper and allows providers and customers to expand capacity by increasing investment through deployment of network gear rather than through major capital construction projects. EoC also has the advantage of avoiding the time and expense of digging up streets to deploy fiber. Broadband services over EoC can therefore be deployed in a fraction of the time it takes to deploy fiber to a new location.

Where copper is available, CLECs rely on it to deliver high-speed broadband to customers. For example, a TelePacific survey of ten CLECs in California shows that they have installed EoC capability in 343 California wire centers, giving approximately 250,000 small and medium businesses (9-249 employees) served by those wire centers the ability to purchase broadband service ranging from 3 meg to 50 meg today.[33] Texaltel undertook a similar study that shows that six CLECs provide EoC broadband that may be available to more than 400,000 business customers in 130 wire centers in Texas.[34]

As business customers increasingly turn to Ethernet-based communications services to

[33] TelePacific *et al.* 1/25/13 Letter at Lubamersky Decl. at pp. 3-5.

[34] TelePacific *et al.* 1/25/13 Letter at 4.

link their Ethernet local area networks ("LANs"), CLECs have been responding by developing broadband offerings based on EoC, Ethernet over DS1, and Ethernet over BSDSL technologies.[35] These services are being marketed to small, medium, and large sized businesses.[36] Further, there is some suggestion that Ethernet services are more cost effective for business customers.[37] According to some providers, when compared to TDM-based services, a business receives over two times the bandwidth for the same price.[38]

Consequently, the demand for EoC is rising. Virtually all enterprise backbones are built using Ethernet technology. Because Ethernet has become the standard for enterprise networks, businesses are seeking and have sought to extend their Ethernet networks from their LAN to their WAN – thereby simplifying and optimizing their IT network.[39] As a result, enterprise customers, including SMBs, continue to migrate towards IP-based applications, thereby expanding their consumption of packet network capacity.[40] These IP-based applications are increasingly multimedia oriented, creating more demand for higher capacity networks. Included in this trend is an increased adoption of Voice over IP (VoIP), with its economy, and efficiency to connect myriad locations, including offices, remote locations and employee home offices.[41] These services must be supported by end-to-end transport networks with high capacity, high

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[35] Covad Comments, WC Docket No. 09-223, at 4 (filed Jan. 22 2010).

[36] Competitive Carriers Hone Their Ethernet Over Copper Skills, Fierce Telecom (May 3, 2011), *available at* http://www.fiercetelecom.com/special-reports/competitive-carriers-hone-their-ethernet-over-copper-skills?utm_source=editorscorner#ixzz1sy4FBq7g.

[37] Letter from Jeffrey K White, Hatteras Networks, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 at Attachment pp. 7-8 (filed June 1, 2009).

[38] *Id*. at 7.

[39] *Id.*

[40] *Id*. at 7-8.

[41] *Id*. at 7.

availability, and high performance denoted by low packet loss, packet latency, and packet jitter.[42]

Despite the enormous promise of copper, the Commission's current copper retirement rules impede competitive carriers' ability to use copper loops to provide EoC at affordable prices. The rules provide no means for any substantive challenge or review of an ILEC's retirement of copper facilities in overbuild situations. The minimal procedural rules that do exist only provide for limited objections by a provider currently interconnecting with the ILEC's network and, then, generally only provide for additional time for the competitor to get off the facilities.[43] Thus, the rules afford no protection of copper facilities CLECs may want to use in the future and nearly no protection for copper facilities CLECs are using at the time of the proposed retirement. Finally, the alternative to the copper loops provided for by the Commission's rules – a 64 kbps FTTH/FTTC[44]and TDM-based DS1s and DS3s[45]- is inadequate to meet the bandwidth demanded by both business and residential customers. Few business customers today want only simple, single-line, voice service, which is all a CLEC can offer using a 64 kbps channel. At bottom, under the current FCC retirement rules, the ILECs can preclude the deployment of copper-based broadband services in overbuild situations by retiring the copper loop (in whole or in part), even where the copper facilities remain and could be utilized for the provision of competitive broadband services.

Based on public statements from ILECs, the retirement of copper loops or feeder will

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[42] *Id.*

[43] 46 C.F.R. § 51.333(c). Moreover, the Commission excluded the copper feeder plant from the limited protection it did provide to copper loops and subloops. *Triennial Review Order*, n.829. If the copper feeder plant is unavailable for unbundled access, the practical difficulty of obtaining access to the remaining portion of the loop forecloses competitive access to the customer. *See* BridgeCom International, Inc. *et al*, Petition for Rulemaking and Clarification, RM-11358, at 12 (filed Jan. 18, 2007). *See also* Letter from Karen Reidy, COMPTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137 and RM-11358, at 3-4 (filed Dec. 7, 2009) (discussing same).

[44] *See* 47 C.F.R. § 51.319(a)(3)(iii)(C).

[45] *See* 47 C.F.R. § 51.319(a)(2)(ii).

accelerate in the near future.[46] Given the large number of Americans that already have access to high-speed broadband over copper loops, and the larger number of Americans that do not have access to affordable broadband today, the Commission should not permit this loss of high speed broadband. AT&T's request to be relieved of offering copper facilities is ill supported and should be rejected, especially since AT&T itself will continue to rely on copper.

Instead, the Commission should modify its copper retirement rules to ensure that (1) customers currently receiving broadband over copper loops do not lose their affordable broadband service and (2) the rules promote the regulatory certainty necessary for further investments in development of new technologies for affordable broadband over copper.[47]

V. TELEPACIFIC SUPPORTS THE NTCA PETITION

TelePacific supports NTCA's "Smart Regulation" approach to promoting and sustaining an IP evolution. As NTCA explained, the "ongoing evolution" of the PSTN from a TDM circuit switched network to an IP-based network should not be viewed as a network replacement but rather "a technology shift within a network."[48] "[A]n instantaneous cutover is impractical if not impossible" and "both the old and new networks [will be] operating simultaneously for a significant period of time," as industry reports indicate. [49]

Given this, as NTCA recognizes, the FCC should not attempt simply obliterate all current regulation and start with a blank slate of no regulation.[50] TelePacific agrees with NTCA that taking the latter approach would dramatically increase the uncertainty that already exists in this

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[46] *See* TelePacific *et al.* 1/25/13 Letter at 11.

[47] *See id*. at 4.

[48] NTCA Petition. at 2.

[49] NRRI Transition Report at 24.

[50] *See* NTCA Petition at 6-7.

industry. Starting from ground zero would create a regulatory vacuum that would put some consumers at risk and generate massive waves of uncertainty that would undermine IP evolution and investment.[51] The Commission should instead modify, where necessary, the existing framework based on sound principles that have "stood the test of time." Under NTCA's proposed "smart" regulatory approach, all stakeholders will be able to provide input on regulations that should be eliminated, retained, or adopted to protect consumers, promote competition and ensure universal service.

To that end, to ensure American consumers are protected and continue to receive the benefits of competition unleashed under the 1996 Act, precompetitive requirements, such as those under Sections 251 and 271, must be maintained and applied in a technologically neutral manner. Applying regulations in a neutral manner will allow competitors to access bottleneck facilities based on the economics of obtaining alternative facilities, rather than on the particular network protocol used or the form of the transmission medium. As AT&T's Chairman Randall Stephenson observed, the Commission must "make sure that regulations aren't tied to specific technologies but more to services."[52]

VI. AT&T'S PETITION SHOULD BE SUBSTANTIALLY MODIFIED OR DENIED

In contrast with NTCA's sensible smart regulation approach, AT&T's petition asks the Commission to "effectively take a 'sledgehammer' to the regulatory foundation and start from scratch.[53] AT&T's proposal is premised on the unsupported and unwarranted assumption that neither AT&T nor any other ILEC controls bottleneck last mile transmission facilities and that

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[51] *Id.* at 12.

[52] Transcript, AT&T Nov. 7, 2012 Analyst Conference Call at 23.

[53] *See* NTCA Petition at 6.

competition will flourish in an IP world without any regulations. This approach rejects the Commission's long history of promoting competition from multiple providers. This fundamental policy objective must continue as the PSTN evolves toward a broadband IP-based platform for communications services. Continuing the objective of stimulating competition, both intermodal and intramodal, is imperative in driving a "virtuous cycle of innovation and investment…and protect[ing] consumers.[54]

A. If a Trial Is Held, Steps Must Be Taken to Protect Customer-Carrier Relationships and the Trial Process Must Be Clarified

AT&T proposes that the trial allow ILECs to "propose individual wire centers" for "an experiment" in which the Commission would eliminate what AT&T characterizes as "outdated 'telephone company' regulations."[55] AT&T does not explain what such a trial would measure or how it would be determined whether the trial is a success. As a threshold matter, these issues must be addressed.

The Commission should reject AT&T's proposed trial, as proposed. Should the Commission decide, however, to proceed with a trial, safeguards should be implemented to ensure that it is conducted in a manner that is fair and minimizes the public harm that will inevitably result from it.

First, to ensure that the appropriate trial wire centers are picked, ILECs should not have the sole discretion to choose which wire center is subject to the trial. Rather, the Commission should identify the trial wire centers after it affords a full opportunity to all interested parties to provide input on which wire centers to select for the trial.

Second, the Commission should establish a set of ground rules under which the trial is

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[54] *See* FCC Chairman Julius Genachowski Announces Formation of Technology Transitions Policy Task Force (Dec. 10, 2012).

[55] AT&T Petition at 21-22.

conducted. The Commission should allow all interested parties to provide input on such ground rules, which should be designed to prevent damage to competition.

VII. CONCLUSION

For the aforementioned reasons, the Commission should deny AT&T's Petition and, consistent with NTCA's petition, should examine — in numerous proceedings already before it that address these issues — how to recalibrate and modernize the existing legal and regulatory framework in conjunction with the ongoing evolution to IP-based broadband networks. If the Commission grants AT&T's Petition, it should modify AT&T's proposal for a trial, consistent with these Comments.

Respectfully submitted,

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